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RC-8922

) UNITED STATES DISTRICT COURT
DR. FADI CHAABAN; DR. SABINO R. TORRE;) DISTRICT OF NEW JERSEY
DR. CONSTANTINOS A. COSTEAS and)
DR. ANTHONY J. CASELLA, as Trustees of) Civil Action
Diagnostic & Clinical Cardiology, P.A.)
Profit Sharing Plan,) Case No. 2:08-cv-1567 (GEB-MCA)
)
Plaintiffs,)
) DECLARATION OF ROBERT J. CONROY
v.) IN SUPPORT OF MOTION FOR
) LEAVE TO FILE THIRD-PARTY,
DR. MARIO A. CRISCITO,) COMPLAINT, PURSUANT
) TO FED. R. CIV. P. 14(a)
Defendant,)
)
and)
)
DR. MARIO A. CRISCITO,)
)
Third-Party Plaintiff,)
)
v.)
)
AMERICAN PENSION CORPORATION;)
BRIAN P. WARNOCK and DOMINIQUE)
SANDRA ECK,)
)
Third-Party Defendants.)
)

I, ROBERT J. CONROY, of full age, do hereby declare that:

1. I am an Attorney-at-Law of the State of New Jersey and a member of the Bar of the United States District Court for the State of New Jersey, and a principal of the law firm of Kern

Augustine Conroy & Schoppmann, P.C., counsel for the defendant in the above-captioned action, Dr. Mario A. Criscito (“Dr. Criscito”). I make this declaration in support of Dr. Criscito’s motion for leave to file a third-party complaint against the third-party defendants, American Pension Corporation (“APC”), Brian P. Warnock (“Mr. Warnock”) and Dominique Sandra Eck (“Ms. Eck”).

2. By way of background, as set forth in the plaintiffs’ complaint, the plaintiffs are four physicians (“Plaintiffs”), who bring the complaint in this action as Trustees of the Diagnostic & Clinical Cardiology, P.A., Profit Sharing Plan (the “Plan”). Diagnostic & Clinical Cardiology, P.A. (“DCC”) is a medical group engaged in the practice of cardiology, founded by the defendant, Mario A. Criscito, M.D. (“Dr. Criscito”). The Plaintiffs’ complaint sets forth causes of action allegedly arising under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, et seq. The majority of the alleged wrongful acts underlying the Plaintiffs’ complaint are claimed to have taken place “in early January 2000.”

3. The complaint alleges that Dr. Criscito formed and created the “Diagnostic and Clinical Cardiology, P.A. Money Purchase Pension Plan,” of which Dr. Criscito was the sole trustee, in or about 1976. ¶16.¹ The complaint further alleges that, for tax purposes, DCC converted the “Money Purchase Pension Plan” into a profit sharing plan named “Diagnostic & Clinical Cardiology, P.A. Profit Sharing Plan” in January of 2005. ¶17. The complaint alleges various defalcations on the part of Dr. Criscito with respect to the Plan, the details of which are not pertinent to this motion.

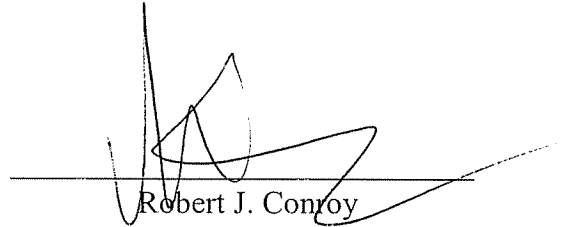
4. As set forth in the proposed Third-Party complaint, DCC employed an independent third-party administrator, American Pension Corporation, to administer the functions of the Plan. Brian P. Warnock (“Mr. Warnock”), a Vice-President of APC, and Dominique Sandra Eck (“Ms.

¹ All references in this declaration are to the paragraph numbers in the plaintiffs’ complaint.

Eck”), a pension consultant at APC, worked on the DCC Plan. Mr. Warnock was deposed on June 16, 2009 and again on July 15, 2009.

5. The defendant moves for leave to file a third-party complaint against APC, Mr. Warnock and Ms. Eck, on the grounds that Mr. Warnock has admitted that APC was in possession of brokerage account statements from early 2000 which, had they been consulted, would have, no later than October of 2001, revealed discrepancies in the valuation of the Plan account which would have prevented the events of which the plaintiffs now complain. See Exhibit “A” appended hereto, a true copy of an extract from the transcript of Mr. Warnock’s deposition, which took place on June 19, 2009. T6/19/09; 157:6 - 163:11.

6. I declare under penalty of perjury that the foregoing statements made by me are true and correct.



Robert J. Conroy

Dated: Bridgewater, New Jersey
April 26, 2010